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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

BACKWEB TECHNOLOGIES, LTD., Plaintiff, v. MICROSOFT CORPORATION and SYMANTEC CORPORATION, Defendants.	Case No. CV 09-1224 CW **STIPULATED AND SUPPLEMENTAL PROTECTIVE ORDER RE DISCLOSURE OF CONFIDENTIAL SOURCE CODE**

The parties hereby stipulate to and submit the following proposed Supplemental Protective Order governing disclosure and discovery of confidential source code ("Supplemental Order") as a supplement to the protective order previously stipulated to by the parties in this case and filed with the Court ("Protective Order"). The following provisions shall apply, in addition to the provisions of the Protective Order, to any discovery material that constitutes or includes confidential, proprietary and/or trade secret source code:

1.   As used herein, the term "source code" means computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, other translator or other data processing module.

2.   Discovery Material designated as "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY" that constitutes or includes confidential, proprietary and/or trade secret source code may be designated as "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY – SOURCE CODE" and thereby made subject to the provisions of this Supplemental Order.

3.   All source code that is produced shall be made available for inspection in native, computer-searchable electronic format within three business days of receiving written (including email) notice from the Receiving Party. The Producing Party need not produce source code on a computer such that it can be compiled into an executable program; however, the Parties have agreed to discuss the exchange of executable code. Defendants will make their source code available for inspection at the San Francisco office of Orrick (or such other location as may be mutually agreed by the parties), and BackWeb will make its source code available for inspection at the San Francisco office of its outside counsel, Hosie Rice LLP (or such other location as may be mutually agreed by the parties). All parties will make its source code available between the hours of 9:00 a.m. and 5:00 p.m. on weekdays

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1 and on weekends by request if practicable. The Receiving Party may inspect the electronic

2 copy of the source code as many times or days as reasonably necessary prior to the close of

3 fact discovery for preparation of its case. A list of names of persons who may view the

4 source code will be provided to the Producing Party in conjunction with the written

5 (including email) notice requesting inspection. The Receiving Party shall maintain a daily

6 log of the names of persons who enter the locked room to view the source code and when

7 they enter and depart. The Producing Party shall be entitled to have a person observe all

8 entrances and exits from the source code viewing room, and to a copy of the log. Inspection

9 by a Receiving Party may be subject to additional, reasonable security measures by the

10 Producing Party (e.g., the Producing Party may require presentation of photo identification

11 by representatives of the Producing Party prior to inspection). The Producing Party shall

12 make available a laser printer with commercially reasonable printing speeds (*i.e.,* with a

13 minimum rating of 20 pages per minute) for on-site printing during inspection of the code.

14 The Receiving Party inspecting the Source Code may make a maximum of five thousand

15 (5000) pages of printouts on 8 1/2 X 11 inch paper. Requests for additional pages shall not

16 be unreasonably withheld. The Producing Party shall Bates number, copy, and label

17 "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY – SOURCE CODE" any pages

18 printed by the Receiving Party and shall provide one copy set of such pages to the Receiving

19 Party and shall retain one copy set. The Producing Party shall provide such copies to the

20 Receiving Party as soon as possible, and shall make a good faith effort to provide such copies

21 to the Receiving Party within no more than two business days of the inspection, taking into

22 consideration (1) the volume of printed pages, (2) the notice and time of day of the request,

23 and (3) the availability of qualified support personnel. To expedite delivery of the copies, if

24 the Producing Party is unable to provide the labeled copies on the day of the inspection, the

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Producing Party shall provide such copies via overnight courier or hand delivery. The

printed pages shall constitute part of the source code produced by the Producing Party in this

action. Subject to the page limit above, the Receiving Party, at its discretion and in addition

to on-site printing, may designate reasonable portions of the code to be printed by the

Producing Party (such designations must be made by reference to specific file names and

specific start and stop points in the code within a file). The Producing Party shall produce

such designated portions of the source code in a paper format as soon as possible, and shall

make a good faith effort to do so within no more than four business days of the request, and

shall deliver it directly to the Receiving Party's outside counsel of record via hand delivery

or overnight courier. All such printed portions of source code shall include a complete file

name or reference sufficient to identify the particular type and version of source code it

reflects, and line numbers if they are contained as part of the code.

4.   All source code will be made available by the Producing Party to the

Receiving Party's outside counsel and/or experts in a private room on a computer without

Internet or other network access or peripheral devices except a non-networked printer and

without interference from or observation by the Producing Party or its counsel or agents

(except that the entrances and exits from the source code viewing room may be observed).

The Receiving Party's outside counsel and/or experts shall be entitled to take notes relating

to the source code but may not copy the source code into notes. The Receiving Party's

outside counsel and/or experts shall be entitled to bring and use software tools stored on

read-only media for viewing and searching source code and the Producing Party shall make

reasonable accommodations to allow the use of those tools. The Receiving Party shall

provide written notice to the Producing Party of what tool(s) it intends to use at least 24

hours prior to the inspection. In addition, the Producing Party shall provide hardware and

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basic software that enables the Receiving Party's outside counsel and/or experts to read and search the source code on the appropriate platform.

5. The parties' stipulation to this order is made without prejudice to either party's right to request from the other party, or to seek an order from the Court that would require additional or different arrangements for inspecting source code in the future.

6. Other than as provided in this Supplement Order, the Receiving Party will not copy, remove, transmit, or otherwise transfer any source code outside or away from the computer in which the source code is provided for inspection under Paragraph 5.

7. The Receiving Party's outside counsel of record and designated expert shall maintain and store any paper copies of the source code at their offices in a manner that prevents duplication of or unauthorized access to the source code, including, without limitation, storing the source code in a locked room or cabinet at all times when it is not in use.

8. The Receiving Party's outside counsel of record may make one paper copy of any source code printed pursuant to Paragraph 4 above for its designated expert, but shall not make additional paper copies other than copies attached to court filings or to be used in depositions. All paper copies shall be securely destroyed if they are no longer in use (e.g., at the conclusion of a deposition). Copies of source code that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers. Except as provided in this paragraph or in Paragraph 4 above, the Receiving Party may not create electronic images, or any other images, of the source code from the paper copy for use in any manner (e.g., may not scan the source code to a PDF, or photograph the code). The Receiving Party may create an electronic copy or image of selected portions of the source code only when

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reasonably necessary to accomplish any filing with the Court or to serve any pleadings or

other papers on any other party (including expert reports). Images or copies of source code

shall not be included in correspondence between the parties (references to production

numbers shall be used instead), and shall be omitted from pleadings and other papers

whenever possible. In addition, the Receiving Party may create up to two electronic copies

of the paper copy of the source code for its internal work-product use, but no more than one

in each of the offices of the law firms representing the Receiving Party. The Receiving Party

may create an electronic copy or image of a selected portion of the source code exceeding

five printed pages of code in a single document only when the electronic copy has been

encrypted using commercially reasonable encryption software including password protection.

The communication and/or disclosure of electronic versions of the source code shall at all

times be limited to individuals who are authorized to see source code under the provisions of

this Protective Order. The Receiving Party shall maintain a log of all electronic and paper

copies of source code in its possession or in the possession of its retained consultants,

including the names of the recipients of any electronic or paper copies and the locations

where the copies are stored. Additionally, all electronic copies must be labeled ""HIGHLY

CONFIDENTIAL --ATTORNEYS' EYES ONLY – SOURCE CODE".

     9.   The Receiving Party's outside counsel may only provide access to the source

code to individuals specified in Paragraph 7.3(a), (c)-(f) of the Protective Order.

     10.   The parties may arrange, by mutual agreement, for the production and

inspection of source code under terms that are less restrictive than those contained in this

Supplemental Order without further order of the Court.

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2   Date: October 7, 2009

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MICROSOFT CORPORATION

2

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15   *Attorneys for Defendant*
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16

17

18   I hereby attest pursuant to General Order 45.X.B. that concurrence in the electronic

19 filing of this document has been obtained from the other signatories.

    DATED: October 7, 2009
20

21   */s/ Bruce Wecker*
                                      _____
22   Bruce Wecker

23

24   **PURSUANT TO STIPULATION IT IS SO ORDERED.**

25
         10/14/09
26 Dated: _____   _____
                                     Honorable Claudia Wilken
27   U.S. DISTRICT COURT JUDGE

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